

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

Al McZeal,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	CIVIL ACTION NO. H-09-1490
	§	
EMC Mortgage Corporation,	§	
	§	
Defendant.	§	

**ORDER**

Al McZeal filed a notice of appeal from this court's order of dismissal and now asks this court to allow him to proceed *in forma pauperis* on appeal, without prepayment of fees. (Docket Entry No. 17). This case was dismissed without prejudice after McZeal failed to comply with sanctions and obey a preclusion order that required him to obtain permission to file a case in this district from the Chief Judge of the Southern District of Texas. This court set a deadline for McZeal to seek such permission. That deadline has not expired.

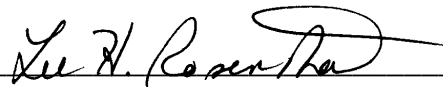
Rule 24 of the Federal Rules of Appellate Procedure provides:

*A party who was permitted to proceed in forma pauperis in the district-court action, . . . may proceed on appeal in forma pauperis without further authorization, unless:*

A. *the district court—before or after the notice of appeal is filed—certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states its reasons for the certification or finding.*

FED. R. APP. P. 24(a)(3) (emphasis added). In deciding whether to grant a party leave to appeal *in forma pauperis*, a district court considers whether the party “seeks appellate review of any issue “not frivolous.” *Howard v. King*, 707 F.2d 215, 219-220 (5th Cir. 1983) (citations omitted). Finding that appeal would be frivolous, this court certifies that the appeal is not taken in good faith and that McZeal should not be allowed to proceed on appeal *in forma pauperis*. His motion, Docket Entry No. 17, is denied.

SIGNED on October 28, 2009, at Houston, Texas.

A handwritten signature in black ink, appearing to read "Lee H. Rosenthal", is written over a horizontal line.

Lee H. Rosenthal  
United States District Judge